Charan Dass a/l Sadhu Ram v YM Tunku Abdul Aziz & Ors

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO R1–22–08 OF 2005
RAUS SHARIF J
28 FEBRUARY 2006

Unincorporated Associations — Members' club — Misconduct of member — Alleged misconduct of member — Complaint was dismissed by Election & Disciplinary Committee ('EDC') after complaint was withdrawn — Discord amongst members of the EDC in relation to handling of complaints against member — General Committee ('GC') of club appointed a Special Investigation Committee ('SIC') comprising senior members of the club to scrutinize the conduct of the EDC — Member sought injunction to restrain the GC from appointing the SIC — Whether there was serious questions to be tried — Balance of convenience

The plaintiff is a member of the Royal Selangor Club ('the Club'), a social and sporting club. He is also the Chairman of the Election and Disciplinary Committee ('EDC') of the Club. The EDC is charged under the Constitutional Rules of the Club ('Rules') with the handling of the admission or election of members and the discipline of members. The first to the eighth defendants are members of the General Committee ('the GC') of the Club. The GC is the body entrusted by the Rules with the day to day management of the Club. A member of the Club, Deepak Sharma, lodged a complaint against the plaintiff. As the complaint was against the plaintiff who is the Chairman of the EDC, the President of the Club referred the complaint to one Mr Andrew Bryan Perera, a member of the EDC. Subsequently, Deepak Sharma withdrew his complaints against the plaintiff. A discord occurred within the EDC as to how to proceed. Mr Andrew Bryan Perera who chaired the meeting was of the view that proper procedures need to be followed before the complaints could be dismissed. The other three members of the EDC disagreed. They were in favour of dismissing the complaints. Hence, by a majority vote of 3:1 the complaints against the plaintiff were dismissed. Following from the decision of the EDC, the GC held several meetings and through the General Manager wrote to the members of the EDC stating that the GC had come to note the impasse and discord amongst members of the EDC in relation to the handling of the complaints against its Chairman and felt compelled to appoint a Special Investigation Committee ('SIC') comprising senior members of the Club to scrutinize the conduct of the EDC. On the day the SIC was established, the plaintiff filed this action seeking: (i) an injunction to restrain the GC from appointing or causing the appointment of a SIC to re-open and inquire into the decision of the EDC; (ii) an order restraining the GC from acting on the recommendations of the SIC; and (iii) an injunction to restrain the defendants from putting into abeyance all duties and functions of the plaintiff as the EDC Chairman and for the plaintiff to be reinstated with immediate effect.

Held, dismissing the application:

(1) The plaintiff's claim did not disclose serious issues to be tried or has demonstrated an unusually strong and clear case. The plaintiff's main complaint was his fear that the SIC would rehear the complaints made against him. But the SIC was not tasked to reopen the inquiry into Deepak Sharma's complaints against the plaintiff. Its terms of reference were solely to scrutinize the conduct of the EDC members (excluding the plaintiff) and to make a finding as to whether the EDC had properly and judiciously inquired into Deepak Sharma's complaints before the complaints were dismissed. In fact, the SIC had completed its task. A perusal of the SIC's report will show that the SIC did not rehear the complaints against the plaintiff. Hence, the plaintiff's fear was unfounded (see para 27).

(2) The SIC was a sub-committee of the GC and the appointment was clearly permitted by r 27 of the Club (see para 28).

(3) There were no serious issues to be tried in this case and consequently the injunctions prayed for by the plaintiff must fail. Injunctions sought by a member in a social and sporting club should not be easily given. Whatever disputes relating to the rights and privileges of members of the club should be resolved within the rules of the club. The management of the club should be allowed to administer the club without interference from the courts. If every action of the management of a social and sporting club is allowed to be injuncted by the courts, the courts would be inundated with such actions. At the same time, clubs in this country would not be able to function (see para 29).

(4) The plaintiff's rights as a member of the Club was not affected by the decision of the GC in setting up the SIC. He continued to enjoy his rights and privileges as a member of the Club. His position as the Chairman of the EDC remained, except that his duties, as the Chairman of the EDC had been placed in temporary abeyance pending the report of the SIC. Therefore, there was no reason for the plaintiff to injunct the GC in appointing the SIC. If at all the plaintiff was not happy with the decision of the GC of putting into abeyance his duties and functions as the Chairman of the EDC, he should bring his case to the members. It is the members who will ultimately determine the fate of the plaintiff as well as the fate of the GC (see para 30).

[Bahasa Malaysia summary

Plaintif adalah seorang ahli Royal Selangor Club ('Kelab tersebut'), sebuah kelab sosial dan sukan. Beliau juga Pengerusi Jawatankuasa Pilihanraya dan Tatatertib ('JPT') Kelab tersebut. JPT tersebut dikawal di bawah Peraturan-peraturan Perlembagaan Kelab tersebut ('Peraturan tersebut') dengan pengendalian kemasukan atau pemilihan ahli-ahli dan tatatertib ahli-ahli. Defendan-defendan pertama dan kelapan adalah ahli-ahli Jawatankuasa Am ('JA') Kelab tersebut. JA adalah satu badan yang dipertanggungjawabkan oleh Peraturan tersebut dengan pengurusan harian Kelab tersebut. Seorang ahli Kelab tersebut, Deepak Sharma, telah membuat aduan terhadap plaintif. Memandangkan aduan itu adalah terhadap plaintif yang merupakan Pengerusi JPT, Presiden Kelab tersebut telah merujuk aduan itu kepada

Encik Andrew Bryan Perera, seorang ahli JPT. Berikutan itu, Deepak Sharma telah menarik balik aduan beliau terhadap plaintif. Satu perbalahan telah berlaku dalam JPT itu berhubung bagaimana untuk meneruskannya. Encik Andrew Bryan Perera yang mempengerusikan mesyuarat itu berpendapat bahawa prosedur betul perlu diikuti sebelum aduan-aduan boleh ditolak. Tiga ahli lain JPT tidak bersetuju. Mereka berpihak untuk menolak aduan-aduan tersebut. Justeru itu, melalui satu undian majoriti 3:1 aduan-aduan terhadap plaintif telah ditolak. Berikutan keputusan JPT, JA itu telah mengadakan beberapa mesyuarat dan melalui Pengurus Besar telah menulis sepucuk surat kepada ahli-ahli JPT menyatakan bahawa JA telah mengambil perhatian tentang jalan buntu dan perbalahan antara ahli-ahli JPT berkaitan pengendalian aduan-aduan terhadap Pengerusinya dan berasa terpaksa melantik satu Jawatankuasa Siasatan Khas ('JSK') yang terdiri daripada ahli-ahli lama Kelab tersebut untuk meneliti perlakuan JPT. Pada hari JSK ditubuhkan, plaintif telah memfailkan tindakan ini memohon: (i) satu injunksi untuk menyekat JA daripada melantik atau menyebabkan pelantikan satu JSK untuk membuka semula dan menyiasat keputusan JPT; (ii) satu perintah menyekat JA daripada bertindak atas cadangan JSK; dan (iii) satu injunksi untuk menyekat defendan-defendan daripada tidak menguatkuasakan lagi semua kewajipan dan fungsi plaintif sebagai Pengerusi JPT dan agar plaintif dikembalikan jawatannya dengan segera.

Diputuskan, menolak permohonan tersebut:

(1) Tuntutan plaintif tidak memperlihatkan persoalan-persoalan serius yang perlu dibicarakan atau telah menunjukkan satu kes yang kukuh dan jelas. Aduan utama plaintif adalah kebimbangan beliau bahawa JSK akan mendengar semula aduan-aduan yang dibuat terhadap beliau. Namun JSK tidak ditugaskan untuk membuka semula siasatan berhubung aduan-aduan Deepak Sharma terhadap plaintif. Terma rujukannya semata-mata untuk meneliti perlakuan ahli-ahli JPT (kecuali plaintif) dan membuat penemuan berhubung sama ada JPT telah menyiasat dengan betul dan adil aduan-aduan Deepak Sharma sebelum aduan-aduan tersebut ditolak. Bahkan, JSK telah melaksanakan tugasnya. Satu penelitian laporan JSK menunjukkan bahawa JSK tidak mendengar semula aduan-aduan terhadap plaintif. Justeru itu, kebimbangan plaintif tidak berasas (lihat perenggan 27).

(2) JSK itu merupakan jawatankuasa kecil JA dan pelantikan itu jelas dibenarkan oleh k 27 Kelab tersebut (lihat perenggan 28).

(3) Tiada persoalan serius yang perlu dibicarakan dalam kes ini dan berikutan itu injunksi yang dipohon oleh plaintif harus gagal. Injunksi yang dipohon oleh ahli kelab sosial dan sukan tidak boleh diberikan dengan senang. Apapun pertikaian berkaitan hak-hak dan keisitimewaan ahli kelab hendaklah diselesaikan berdasarkan peraturan kelab. Pengurusan kelab patut dibenarkan mentadbit kelab itu tanpa campur tangan daripada mahkamah. Jika setiap tindakan pengurusan suatu kelab sosial dan sukan dibenarkan untuk diinjunksikan oleh mahkamah, mahkamah akan dibebani dengan tindakan sedemikian. Pada masa yang sama, kelab-kelab di negara ini tidak akan dapat berfungsi (lihat perenggan 29).

(4) Hak-hak plaintif sebagai ahli Kelab itu tidak terjejas oleh keputusan JA menubuhkan JSK. Beliau masih menikmati hak-hak dan keistimewaan beliau sebagai ahli Kelab itu. Kedudukan beliau sebagai Pengerusi JPT masih kekal, kecuali berhubung tugasannya, sebagai Pengerusi JPT telah dibiarkan begitu buat sementara menunggu laporan JSK. Oleh itu, tiada sebab untuk plaintif menyekat JA melantik JSK. Jikapun plaintif tidak gembira dengan keputusan JA mengenepikan tugas dan fungsi beliau sebagai Pengerusi JPT, beliau patut mengemukakan kes beliau kepada ahli-ahli tersebut. Ahli-ahlilah yang akan menentukan nasib plaintif dan juga nasib JA (lihat perenggan 30).]

Notes

For a case on members' club generally, see 12 *Mallal's Digest* (4th Ed, 2002 Reissue) paras 2371–2381.

Cases referred to

Keet Gerald Francis Noel v Noor bin Abdullah & Ors [1995] 1 MLJ 193 (refd)
Lewis v Heffer [1978] 1 WLR 1061 (refd)
Siva Peruman v Heah Seoh Yeong Realty [1979] 1 MLJ (refd)

CS Kumar (Prem Ramachandran with him) (Sri Ram & Co) for the plaintiff.
Cecil Abraham (Rishwant Singh with him) (Shearn Delamore & Co) for the first, second, third, fourth, sixth, seventh and eighth defendants.
SP Pathi (Pathi & Associates) for the fifth defendant.

Raus Sharif J:

BACKGROUND FACTS

[1] The plaintiff is a member of the Royal Selangor Club ('the Club'), a social and sporting club. He is also the Chairman of the Election & Disciplinary Committee ('EDC') of the Club. The EDC is charged under the Constitutional Rules of the Club ('Rules') with the handling of the admission or election of members and the discipline of members. The EDC is made up of five members. Three of the members of the EDC, including the plaintiff, were elected at the Annual General Meeting ('AGM') of the Club. The remaining two members were appointed by the Chairman of the EDC.

[2] The first to the eighth defendants are members of the General Committee ('the GC') of the Club. The GC is the body entrusted by the Rules with the day to day management of the Club.

[3] The background which led the plaintiff in filling this action against the defendants may be summarised as follows.

[4] A member of the Club, Deepak Sharma was at the Pavilion Bar in the Club on 23 September 2005. He had a female friend with him. After 1am, the plaintiff joined Deepak Sharma in the bar. What happened then is best described by Deepak Sharma

in his letter of complaint dated 25 September 2005 addressed to the President of the Club. The complaint (the first complaint) reads as follows:

> Complaint Against Dato' Charan Dass
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> On the night of 23 September 2005, I was at the Pavilion Bar with Satvinder Singh Tugal, Mr Tuljaram and Ms Esther who was a guest of mine. Also present was Mr Meyappan, security officer of the club. There was no one else in the Pavilion Bar.
>
> Sometime after 1am, Dato' Charan Dass came into the Pavilion Bar and walks towards us. He then started shouting and using vulgarities at Satvinder. Satvinder then asked him what was the problem and advised him to calm down. Dato' Charan told Satvinder that he was not there to spoil Satvinder's night but instead wanted to 'fuck-up' the young member's night. As I was the youngest member in the group, I believe he referred to me.
>
> Mr Tuljaram then offered Dato' Charan to have a drink from the bottle of White Label whisky which was purchased by Satvinder. Dato' Charan refused by shouting out loud that White Label is the drink for dogs, that only dogs drank it and that he did not drink suck drinks. He went on further to say that is was for 'pariahs'. He repeated this many times.
>
> I was very upset at that statement as we were all drinking out of the same bottle and it only meant that Dato' Charan was calling us dogs. I was totally embarrassed especially due to the fact that I had a lady guest with me and she was treated disrespectfully.
>
> I then quietly gestured to my lady guest and we left the bar.
>
> I was informed the next day that the security officer, Mr Meyappan, was urged to make a complaint in his book to say that I had broken the Club's Rules by not signing in my guest. This is not true as I had signed in the Guest Book upstairs at the Reception. But I was more shocked when I was told that I was accused of molesting my lady guest. This is certainly not the case and the others present there will also agree with me.
>
> I am aware that this complaint of mine is serious in nature. But I have to make it to protect my name, my guest and the integrity of the Club.
>
> Lastly, I urged your goodself that this complaint be looked into by an independent panel as Dato' Charan is the Head of the E & D Committee. As such, transparency and unbiasness may not be fully served since the committee comprises of members appointed by the Chairman. Although there are no procedures laid down in the constitution for such a situation, I feel that the General Committee has sufficient powers and authority to create such procedure and bye laws as allowed in the Constitution.

[5] As the complaint was against the Chairman of the EDC, the President of the Club referred the complaint to Mr Andrew Bryan Perera, a member of the EDC. The President's letter dated 3 October 2005 to Mr Andrew Bryan Perera reads as follows:

> As you have customarily chaired the meetings and inquiries of the Election & Disciplinary Committee, in the absence of Y. Bhg. Dato' Charan Dass, I am forwarding to you, the complaint from Mr. Deepak Sharma as it pertains to YBhg. Dato' Charan Dass. I enclose an extract from the Security Log Book and the Guest Book at the Reception Counter at Kiara Sports Annexe relating to the above matter.
>
> You will note that Mr Deepak Sharma, in his complaint referred to a report made by Mr Meyappan, the Security Guard on duty and I confirm that a report was lodged by him.
>
> Consistent with the Club's established procedures, the General Manager interviewed Mr Meyappan to ascertain the facts and establish the circumstances leading to the report that he lodged.

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> Given the gravity of the matter, I am of the view that it warrants an immediate and objective inquiry by the E & D with full adherence to its established procedures as it has always been the case.

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[6] On the same day, the President wrote a further letter to Mr Bryan Perera which reads:

C

> I refer to my earlier note of today's date and now write to elaborate further on the matter of Mr Deepak Sharma's complaint. I also enclose the General Manager's findings based on Mr Meyappan's own version of the alleged incident. It would appear that Mr Meyappan was directed by YBhg Dato' Charan Dass to lodge a report although he did not witness the alleged incident. If this was indeed the case, it raises a separate and more serious issue of misuse of authority by the Chairman of the Election & Disciplinary Committee.

D

[7] On 4 October 2005, Deepak Sharma made a further complaint (the second complaint) against the plaintiff. Deepak Sharma's second complaint to the President reads:

E

> It has come to the general knowledge of the club members and myself that an alleged Incident Report by a security officer had apparently implicated my lady guest and I for misbehaviour. This obviously would have occurred after I had left the Pavilion Bar for reasons already stated in my earlier complaint.
>
> It is very distressing and embarrassing for me and my guest to be subjected to incidents not happening.
>
> It has now come to my knowledge that the said security officer has given a written statement that he did not witness any improper conduct by me and my guest but that he was forced by Dato' Charan Dass (E & D Chairman) to write the report.

F

> I find this totally shocking as it amounts to an abuse of position by the said E & D Chairman.
>
> I would like this matter to be fully enquired and appropriate action taken and at the same time would like to be furnished with a copy of the Incident Report together with a copy of the statement given by the security officer as I would like to correct the false entry and reporting.

G

[8] On 4 October 2005, the EDC convened a meeting to consider the two letters from the President forwarded to Mr Andrew Bryan Perera. As the plaintiff (the Chairman of the EDC) was the subject matter of the complaints lodged by Deepak Sharma, he did not attend or participate in the said meeting. The meeting was chaired by Mr Andrew Bryan Perera in the presence of other members, namely: Mr Raj Kumar Sharma, Mr P Jayasingam and Dato' Omar Khan. To understand what precisely had been discussed at the meeting, it is necessary to reproduce the relevant parts of the minutes:-

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> Mr Andrew Bryan Perera emphasized that notwithstanding the fact that the complaint was against the Chairman of the Election & Disciplinary Committee, this issue should be treated no differently from any other case that has come before the Election & Disciplinary Committee. Mr Andrew Bryan Perera requested the members present to determine whether the letters dated 3rd October 2005 from the President of the Club disclosed any allegations

of misconduct against YBhg Dato' Charan Dass to enable the matter to be taken further. All parties present agreed that the letters dated 3 October 2005 from the President of the Club did in fact disclose an allegation of misconduct against YBhg Dato' Charan Dass which required further investigation. Mr Andrew Bryan Perera further requested the Committee to consider whether the allegations leveled against YBhg Dato' Charan Dass met with the criteria to enable the Committee to suspend YBhg Dato' Charan Dass pending inquiry. After obtaining comments and feedback from all parties present, it was noted that the most serious allegation pertained to the allegation that YBhg Dato' Charan Dass had somehow abused his authority in requiring Mr Meyappan (Security Asst. Supervisor) to make a false report against Mr Deepak Sharma. The Committee noted that from the documents before the Committee members, Mr Meyappan appears to have made two separate and contradictory statements — the statement that he recorded in the Security Log Book appears to be materially different from the statement that was recorded by the General Manager from him on 30 September 2005. Based on these material contradictions, all the members of the Committee were unanimously of the view that the criteria to suspend YBhg Dato' Charan Dass pending inquiry had not been met. In the circumstances, the Committee was unable to consider suspending YBhg Dato' Charan Dass pending inquiry into the allegation leveled against him.

After the above issue was disposed of, the Committee decided that it was necessary to obtain a written explanation from YBhg Dato' Charan Dass to enable it to decide on its next course of action. The General Manager is directed to obtain the relevant explanation from YBhg Dato' Charan Dass with immediate effect. The General Manager is also directed to obtain from Mr Satvinder Singh Tugal and from Mr Tuljaram CK Chand, their version of the incident.

Before the close of the meeting, the Committee members decided that, notwithstanding the Committee's decision not to suspend YBhg Dato' Charan Dass pending inquiry, it may be in the interests of the Club for YBhg Dato' Charan Dass to voluntarily take leave of absence from his duties as Chairman of the Election & Disciplinary Committee until final disposal of the matter pertaining to the complaint lodged by Mr Deepak Sharma. All members of the Committee were unanimously of the view that this was a good idea and this view of the Committee should be communicated to YBhg Dato' Charan Dass for his consideration.

The meeting ended at 7.45pm with a note of thanks to the Chair.

[9] On 11 October 2005, the EDC convened another meeting pertaining to Deepak Sharma's complaints against the plaintiff. At the meeting Mr Jayasingam produced Deepak Sharma's letter of withdrawal. The letter reads:

Kindly refer to both my letter dated 25 September 2005 and 4 October 2005 respectively.

Having examined the matters more closely, I wish to withdraw my complaints against Dato' Charan Dass and require no further re-dress in the matter.

As regards to Mr Meyappan's (security officer) Log Book report and statement made to the GM, I find it to be discrepant and unreliable.

I trust you will appropriately close the matter.

[10] A discord occurred within the EDC as to how to proceed. Mr Andrew Bryan Perera who chaired the meeting was of the view that proper procedures needs to be followed and that the security guard, the plaintiff and Deepak Sharma had to be questioned before the complaints could be dismissed. The other three members of

A the EDC disagreed. They were in favour of dismissing the complaints. Hence, by a majority vote of 3:1 the complaints against the plaintiff were dismissed.

[11] The discord within the members of the EDC can be seen from a letter written by Mr Andrew Bryan Perera to the other three members of the EDC immediately B after the meeting. The letter dated 12 October 2005 reads as follows:

> I refer to the above unscheduled meeting which was convened by Mr Rajkumar Sharma at exceptionally short notice and to place on record my concerns on three major irregularities which I believe must be fully reflected in the Minutes of the meeting.
>
> First, the consideration by the meeting of a letter received by Mr Jayasingam at his office C purportedly signed by Mr Deepak Sharma which stated that he was withdrawing both the complaints, dated 25 September 2005 and 4 October 2005 respectively that he lodged against Dato' Charan Dass. I am most disturbed that Mr Jayasingam was unable to confirm the authenticity of the letter or to confirm that the letter was indeed signed by Mr Deepak Sharma. In short, the Committee deliberated on the letter although it was unable to verify its authenticity.
>
> D The second irregularity relates to the separate and distinct complaint lodged by the President vide his letters of 3 October. He also forwarded a report from the General Manager, following the letters interview with Mr. Meyappan, the Security Guard who alleged that Dato' Charan Dass in his capacity as the Chairman of the E & D had directed and pressurized him to lodge a false report. Given the gravity of the situation, the President E requested the E & D to conduct 'an immediate and objective inquiry with full adherence to its established procedures.' It is regrettable that the E & D by a majority vote also dismissed the complaint by the President without the benefit of a full inquiry to establish the facts and to determine whether Dato' Charan Dass was in breach of the Constitutional Rules of the Club. In any event a meeting of an E & D cannot and should not be deemed to be as a substitute or an alternative for a formal independent and objective inquiry.
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> F Furthermore the withdrawal of the complaint by Mr Deepak Sharma should have had no bearing whatsoever on the separate complaint lodged by the President. Accordingly, the E & D would be derelicting its constitutional responsibilities and acting *male fide* if it decides not to conduct an inquiry on the complaint lodged by the President.
>
> As you are aware, the complaints pertained to the Chairman of the E & D who carries with G him the heavy responsibility of ensuring that all members adhere fully to the Constitutional Rules of the Club. Given the special and unique nature of the complaint, it is incumbent on the E & D to take carefully considered measures to ensure that its handling of both complaints adhere to the highest standards of objectivity and professionalism and that the Committee is seen by all members to be conducting its tasks without fear or favour. Viewed in this context, it would appear that the exceptionally swift manner in which the two H complaints were addressed and disposed off by the E & D leaves much to be desired.
>
> In the circumstances, I am calling for a meeting of the Enquiry Panel, after receipt of the responses of the witnesses, to permit a full, informed and critical review of both complaints and to decide on the follow-up actions that are necessary to ensure that the E & D safeguards its credibility as an effective and objective disciplinary body consistent with its constitutional responsibilities. In the mean time, I suggest that all other matters, arising I from the meeting on 11 October 2005 be kept on hold including communications with Dato' Charan Dass.

[12] The other members of the EDC individually responded to Mr Andrew Bryan Perera's letter and denied each and every allegation made in the said letter. They

additionally informed Mr Andrew Bryan Perera that they would not attend any meeting of the EDC to consider what was raised in Mr Andrew Bryan Perera's letter. For completeness, it is necessary to reproduce the three letters. Mr P Jayasingam's letter dated 12 October 2005 reads:

"I refer to your letter of 12 October 2005, to the members of the Election & Disciplinary Committee and my reply is as follows:

As regards the first paragraph of your letter, I am not sure what is meant by an unscheduled meeting. It was a meeting convened by a member to discuss an issue and it would seem that all those present had no objections to the convening of such a meeting. In fact, you attended and participated in the said meeting.

As regards the second paragraph of your letter, I find this concern out of place. Be that as it may, I wish to state that it is neither my duty nor that of any member of the Committee to even consider the issue of authenticity. We must take a document on its face value and as such and unless there has been some evidence doubting its authenticity I would treat it as authentic, which I did. In any event, I compared the signature on the withdrawal letter with the signature on Mr Deepak Sharma's complaint letter dated 4 October 2005 and found the signatures to be the same.

As regards paragraph three of your letter, I do not consider this to be an irregularity at all. The simple facts are as follows:

(a) There was a complaint lodged by Mr Deepak Sharma against Dato' Charan Dass. This complaint was forwarded by the President requesting it be investigated. There was also a further complaint put in by Mr Deepak Sharma which was also forwarded by the President to the Election & Disciplinary Committee. The President also forwarded a statement recorded by the General Manager from the security assistant supervisor, with a request that this too be investigated;

(b) The usual practice of the Election & Disciplinary Committee is to evaluate the complaints to see if in fact there was a basis for a complaint;

(c) As it happened the complaint by Mr Deepak Sharma was withdrawn vide his letter dated 10 October 2005;

(d) It was therefore, incumbent to deal with the request of the President to investigate and/or to inquire into the statement recorded by the General Manager from the security assistant supervisor. This was considered. Our examination of the documents revealed that the security assistant supervisor presented two different versions of the incident, which essentially would be contradictory of each other. Further, Mr Deepak Sharma himself was of the view that the evidence of the security assistant supervisor was 'discrepant and unreliable'. As such, I do not think there was no deliberation into the request by the President that the statement of the security assistant supervisor be investigated or inquired into.

I do not consider the actions of the E & D in this regard to be *mala fide*. Further, the fact the person under scrutiny was the Chairman of the E & D had no bearing on our deliberations and we conducted our deliberations in the usual unbiased manner and I find your statements expressed in the last sentence to be unnecessary and accusatory.

I do not agree with your intentions in the last paragraph, and I find no need for it. You were present at the meeting and you had raised your objections and it was a committee decision not to proceed further. A decision has been made and as such I consider the matter to be at an end and any decisions regarding this complaint should be communicated to the persons concerned. In any event, I have been informed that the decision of the Election & Disciplinary Committee has been officially communicated to Dato' Charan Dass. I will not

be attending any meeting that you intend to call to discuss this issue further, as I consider raising this issue again after the complaints had been dismissed to be wholly unconstitutional and illegal.

In fact a letter was prepared to inform the plaintiff that Deepak Sharma's complaint had been dismissed. The letter provided for the General Manager's signature but the General Manager being aware of the dispute in the EDC refused to sign the letter. Mr Raj Kumar, a member of the EDC, signed the letter himself. The plaintiff received the letter on 12 October 2005.

[13] Mr Raj Kumar's letter dated 13 October 2005 reads:

Please note, that I called the urgent meeting through Miss Marry the membership and admin officer, to appoint an interim Chairman of the E & D as it was necessary to appoint one from the four of us. There could have been many urgent matters that could have come up for the attention of the E & D in the absence of the Chairman. All those present had no objections to the convening of such a meeting, and even you were present in that meeting.

I totally disagree with you with regards to the other irregularities, which you have quoted in your letter. As in past practice any complaint who has sent a letter withdrawing his complaint, before an enquiry is held, the E & D Comm. has cancelled the said enquiry. You are very well aware of that!

Please further note that the President had at no time lodged a complaint or complaints with regards to Mr Deepak Sharma's complaints of Mr Meyappan's statement to the GM as stated by you in your letter. (Para 3 and 4) the President merely forwarded the complaints by Mr Deepak Sharma and the statement by Mr Meyappan for necessary action.

You are very well aware that the E & D Comm. at that meeting, which you were present and raised your objections, had made a decision to dismiss the complaints lodged against Dato' Charan Dass, after having received a letter from Mr Deepak Sharma withdrawing his complaints.

I have on behalf on the E & D also sent a letter, which the General Manager refused to sign and send, to Dato' Charan Dass informing him of the E & D decision on 12 October 2005.

Therefore, I will not be attending any meeting called by you to discuss this issue again. As I consider raising this issue again after the complaint had been dismissed to be wholly unconstitutional and illegal.

[14] Dato' Omar Khan's letter dated 14 October 2005 reads:

I am in receipt of your letter dated 12 October 2005 and am totally shocked and dismayed by your letter as it is in clear breach of the principles of collective responsibilities.

I attended the meeting held on 11th October 2005, which was called by Mr Rajkumar Sharma to discuss the appointment of a temporary Chairman for the Election & Disciplinary Committee in the absence of YBhg Dato' Charan Dass who had taken a temporary leave of absence pending the disposal of the complaints lodged against him by Mr Deepak Sharma and the disposal of the issues in the statement recorded by the General Manager from the Security Assistant Supervisor.

The meeting was attended by you, Mr P Jayasingam, Mr Rajkumar Sharma and the undersigned as members of the Election & Disciplinary Committee. At all material times, you participated in the said meeting.

At the meeting, Mr P Jayasingam informed the Committee that he had received a letter from Mr Deepak Sharma on 11 October 2005 informing the Committee that he had withdrawn the complaints that he had lodged against YBhg Dato' Charan Dass. There is no dispute on the authenticity of the letter from Mr Deepak Sharma as his signature on the letter was the same as that appeared in one of his complaint letters. After a lengthy deliberation, the majority of the Committee was of the view, that in the circumstances, the complaints of Mr Deepak Sharma against YBhg. Dato' Charan Dass, ought to be dismissed. Further, the majority of the Committee Members were also of the view that due to the serious material contradictions found in the statement given by the Security Assistant Supervisor and in his report recorded in the Security log book, there was no basis to proceed further. In the circumstances, the majority of the Committee decided to dismiss all the allegations leveled against YBhg Dato' Charan Dass. You of course disagreed and registered your objections.

I totally disagree with the views expressed in your letter dated 12 October 2005. I have seen the replies given to you by Mr P Jayasingam and Mr Rajkumar Sharma and totally agree with their views. I would have thought that based on the principles of collective responsibilities, you would have abided by the majority decision. Instead you have chosen to dispute this decision which in my view is final and cannot be challenged or changed by any other party. I must express my absolute disappointment in your action.

[15] Following from the decision of the EDC dated 11 October 2005 and the correspondence ensuring between the members of the EDC, the GC held several meetings and on 14 October 2005, the GC through the General Manager wrote to the members of the EDC stating that the GC had come to note the impasse and discord amongst members of the EDC in relation to the handling of the complaints against its Chairman and felt compelled to appoint a Special Investigation Committee ('SIC') comprising senior members of the Club to scrutinize the conduct of the EDC.

[16] On 21 October 2005, the SIC was appointed comprising of the following:

(i) YBhg Dato' Dr Lim Teong Wah (Chairman);

(ii) YBhg Dato' Mahadev Shankar; and

(iii) Mr Neil Watts.

[17] The terms of reference of the SIC were:

(i) To critically and objectively determine whether due process in respect of the complaints from Deepak Sharma and the complaint lodged by the President had been satisfactorily and judiciously inquired into prior to dismissing the same against the plaintiff.

(ii) To establish if the EDC had conducted itself in the best interest of the Club and the membership at large as well as the interest of natural justice.

(iii) To establish whether the attempt by Raj Kumar Sharma to give instructions to the General Manager were in full conformity with the established policies and procedures of the EDC and the Club; and

(iv) To report its findings with appropriate recommendation to the GC.

[18] On the day the SIC was established, the plaintiff filed this action seeking for the following reliefs:

(i) an injunction to restrain the GC from appointing or causing the appointment of a SIC to re-open and inquire into the decision of the EDC reached at the inquiry held on 11 October 2005 and/or to inquire into the manner in which it was reached until further order of this court;

(ii) an order restraining the GC from acting on the recommendations of the SIC; and

(iii) an injunction to restrain the defendants from putting into abeyance all duties and functions of the plaintiff as the EDC Chairman and for the plaintiff to be reinstated with immediate effect until further order.

[19] On 15 November 2005, at the inter partes hearing, this court made the following orders:

(i) that there will be no interim injunction on the undertaking that the defendants will not act on the recommendation of the SIC pending disposal of the applicant for injunctions; and

(ii) that the defendants are to remove the notice concerning the plaintiff at the Club premises.

ISSUES AND FINDINGS

[20] In essence, what the plaintiff wanted in encl 3 are:

(a) an injunction restraining the defendants from appointing or causing the appointment of a sub-committee to re-open and inquire into the decision of the EDC reached at the inquiry held on 11 October 2005; and

(b) an injunction restraining the defendants from putting into abeyance all duties and functions of the plaintiff as the EDC Chairman.

[21] According to the plaintiff, the allegations and statements made by the parties in this action have given rise to several issues of fact and law that are required to be tried. In particular the plaintiff identified two core issues, namely:

(a) whether or not the GC has the power to appoint the SC to investigate into whether the EDC has adhered to due process when inquiring into the complaints against the plaintiff after the EDC dismissed all complaints against him on 11 October 2005;

(b) whether or not the GC has the power to keep the plaintiff on indefinite leave of absence notwithstanding the aforesaid decision.

[22] It is the plaintiff's argument that pending the determination of the aforesaid core issues, the balance of convenience lies in favor of the plaintiff for the injunctions because:

(a) If the GC is allowed to pursue this course of conduct the plaintiff will not be allowed to carry out his functions as the Chairman of the EDC for the reminder of his term. This would mean that the GC is ignoring the voice of the members of the Club that elected the plaintiff to the EDC;

(b) The plaintiff is an elected member and Chairman of the EDC and should be allowed to perform his functions in the face of the decision of the EDC that has to date not been overturned;

(c) The doctrine of separation of power within the Club should be maintained pending the determination of the issues in this case; and

(d) By informing the members of the Club that the plaintiff is still on leave of absence it suggests to the other members of the Club that he is still embroiled in some disciplinary matter with the Club.

[23] To the plaintiff, he has an unusually strong and clear case and the balance of convenience must favor the enforcement of the Rules of the Club and that if the GC is not stopped from acting in such manner by interim orders, the plaintiff cannot be adequately compensated with damages. The cases of *Keet Gerald Francis Noel v Noor bin Abdullah & Ors* [1995] 1 MLJ 193 and *Siva Peruman v Heah Seoh Yeong Realty* [1979] 1 MLJ were cited to support his argument.

[24] The fifth defendant supported the plaintiff's position. Hence, reference to the defendants hereinafter is restricted to the first to fourth and sixth to eighth defendants only. The defendants at the outset pointed out that:

(i) The SIC does not have as it terms of reference the task of 're opening the inquiry' into Deepak Sharma's complaints against the plaintiff;

(ii) On 4 January 2006, the SIC delivered its report and finding to the GC. Hence, the terms of the SIC has come to an end resulting the injunction as prayed in prayer (a) of encl 3 as academic. The appointment has been made, and the SIC has come to an end.

[25] It was submitted by the defendants that the term of reference of the SIC make it clear that it is the members of the EDC (excluding the plaintiff) who are on trial in the sense that it is their performance of their constitutional duties and the Rules of the Club on 11 October 2005 that are being assessed by the SIC. But none of the four members of the EDC are parties to the action. Since the members of the EDC are not before the court, there is no cause of action against the defendants and encl 3 should be dismissed on that basis alone.

[26] Thus, the central plank of the defendant's submission is that the plaintiff's entire claim is misconceived. To the defendants, there are no serious issues to be tried, the balance of convenience favors the defendants and that the plaintiff has not demonstrated how he would be injured beyond compensation if the injunctions were not granted.

[27] I am in agreement with the defendants. With respect, I am unable to hold that the plaintiff's claim discloses serious issues to be tried or has demonstrated an

unusually strong and clear case. To me, the plaintiff's main complaint was his fear that the SIC would rehear the complaints made against him. But the SIC was not tasked to reopen the inquiry into Deepak Sharma's complaints against the plaintiff. Its terms of reference are solely to scrutinize the conduct of the EDC members (excluding the plaintiff) and to make a finding as to whether the EDC has properly and judiciously inquired into Deepak Sharma's complaints before the complaints were dismissed. In fact the SIC has completed its task and in its report the SIC noted as follows:

> Our task as we saw it was not to pronounce on the guilt or innocence of Dato' Charan Dass but on the propriety and validity of the procedures adopted in disposing the complaints.

A perusal of the SIC's report will show that the SIC did not rehear the complaints against the plaintiff. The SIC was inquiring into the performance of the four members of the EDC who sat when Deepak Sharma's complaints were dismissed. Hence, the plaintiff's fear is unfounded.

[28] I am also of the view that the SIC is a sub-committee of the GC and the appointment is clearly permitted by r 27 which provides:

> 27(i) The General Committee shall have the power to appoint sub-committee and delegate thereto any or all of its powers under the Rules and may from time to time revoke such delegation…

[29] Hence, there are no serious issues to be tried in this case and consequently the injunctions prayed for by the plaintiff in enclosure 3 must fail. Moreover I am always of the view that injunctions sought by a member in a social and sporting club should not be easily given. To me, whatever disputes relating to the rights and privileges of members of the club should be resolved within the rules of the club. The management of the club should be allowed to administer the club without interference from the courts. If every action of the management of a social and sporting club is allowed to be injuncted by the courts, our courts would be inundated with such actions. At the same time clubs in this country would not be able to function. Omrad LJ in *Lewis v Heffer* [1978] 1 WLR 1061 said it in the following words:-

> "No organization can survive steady shower of writ and no organization can possibility made to work by a series of injunctions."

[30] In the present case, the plaintiff's rights as a member of the Club was not affected by the decision of the GC in setting up the SIC. He continues to enjoy his rights and privileges as a member of the Club. His position as the Chairman of the EDC remain, except that his duties, as the Chairman of the EDC had been placed in temporary abeyance pending the report of the SIC. Therefore, there is no reason for the plaintiff to injunct the GC in appointing the SIC. If at all the plaintiff was not happy with the decision of the GC of putting into abeyance his duties and functions as the Chairman of the EDC, he should bring his case to the members. After all, the Club is a members' Club. It is the members who will ultimately determine the fate of the plaintiff as well as the fate of the GC.

[31] For the above said reasons the plaintiff's application in encl 3 is hereby dismissed with costs. **A**

Application dismissed.

Reported by Peter Ling **B**

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